

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,  
Plaintiff,

BERNARD A. KANSKY, et al.,  
Defendants.

Civil No. 12-12198-PBS

REPORT AND RECOMMENDATION ON PLAINTIFF'S MOTION  
TO DISMISS DEFENDANT BERNARD A. KANSKY'S COUNTERCLAIM

September 4, 2013

SOROKIN, C.M.J.

In this action, the government seeks to reduce to judgment more than \$200,000 in alleged federal income tax liabilities of defendant Bernard A. Kansky, and to enforce related federal tax liens via judicial sale of two properties in which Kansky has an ownership interest.<sup>1</sup> See generally Doc. No. 1. Kansky has asserted a counterclaim seeking monetary damages from the government for "Intentional Reckless Conduct - Physical Harm and Emotional Distress." Doc. No. 17 at 11. When it answered the counterclaim, the government listed affirmative defenses based on sovereign immunity and failure to exhaust administrative remedies, both of which it noted were jurisdictional defects.<sup>2</sup> Doc. No. 35 at 1.

On July 31, 2013, the government filed a motion seeking dismissal of the counterclaim, citing lack of subject-matter jurisdiction and, alternatively, failure to state a claim upon which

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<sup>1</sup>Also named as defendants are Kansky's wife, two real estate trusts, the Town of Hull, and the City of Boston. Doc. No. 1. Two other defendants, Mortgage Electronic Registration Systems, Inc. and Wells Fargo Bank, N.A., have defaulted. Doc. No. 30.

<sup>2</sup>The government's answer to the counterclaim was filed late, with Kansky's assent and the Court's approval. Doc. No. 34; Doc. No. 46 at ¶ 2.